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ENERGY AND ENVIRONMENT

Draft Energy and Climate Change Legislation Would Affect Apartments

The pace of Congressional deliberations on energy and climate change picked up last week. Key House leaders released draft legislation and the Senate passed language restricting the spending of any revenues generated by any cap-and-trade program if the issue of climate change is considered as part of the budget bill instead of being advanced as free-standing legislation. This is significant because free-standing measures require 60 votes and are susceptible to Senate filibusters whereas the budget process requires only 50 votes.

The far-reaching House bill released by Energy and Commerce Committee Chairman Henry Waxman (D-CA) and Energy and Environment Subcommittee Chairman Edward J. Markey (D-MA) includes several provisions of interest to apartment firms. **NAA/NMHC have prepared an analysis of the Waxman-Markey bill and the implications it would have for member firms. It is available [here](#).**

Importantly, the bill does include NAA/NMHC-supported incentives for retrofitting existing commercial and residential buildings to improve their energy efficiency. It also seeks to promote renewable sources of energy and the development of a smart grid for electricity transmission that would allow for more efficient distribution of energy and would help improve reliability for end users.

The measure would also impose an "energy efficiency resource standard" (EERS) on utilities that would require them to implement energy efficiency measures to reduce electricity and natural gas use by rate payers. How this will play out for multifamily property owners is not clear, though. It remains to be seen whether there will be incentives to property owners who reduce energy demand or some other more onerous mechanism to force reduced usage. Any effort to significantly reduce energy demand will require rehabilitating existing properties. To that end, we applaud—and will encourage the continuation of—the incentive-based approach that currently offers owners rewards that vary depending on how much energy and water is saved.

Of concern to NAA/NMHC, the draft House bill would essentially mandate that states adopt advanced building efficiency codes that would impose stringent building code requirements on new construction and major renovations. Specifically, the measure requires the adoption of codes that exceed current codes by 30 percent and mandates a 50-percent improvement over codes released after 2015. We are educating lawmakers

about the serious limitations of this approach. Primarily, the building codes referenced by the legislation only cover the building envelope and HVAC systems. To meet the energy performance levels identified in the legislation, however, other facets that are outside of the scope of the codes must be counted, issues such as lighting, hot water heating and other appliances.

In a positive development, in response to our concerns that this requirement will subvert the consensus-based code process by requiring the Department of Energy to set codes if the third-party code-writing organizations are not able to do so, language has been included that would require that the modified code to "achieve the maximum level of energy savings that is technologically feasible and life cycle cost effective."

The House version also includes "disclosure/labeling" provisions that could require property owners to disclose energy scores or performance ratings of their properties. While NAA/NMHC support voluntary labeling programs, such as the ENERGY STAR program, we are concerned that this provision could lead to mandatory requirements. Mandatory labeling requirements are more problematic for the apartment sector because there is no ENERGY STAR rating system for multifamily properties comparable to the one that exists for office properties. We continue to argue against a one-size-fits-all approach and are educating lawmakers about the important differences between multifamily and other commercial real estate sectors.

Finally, the House draft also addresses global warming by creating a cap-and-trade program that would cut greenhouse gas emissions 80 percent by 2050. In his fiscal 2010 budget plan, President Obama proposed a 14-percent cut in emissions from 2005 levels by 2020 and an 83-percent cut below 2005 levels by 2050; although the provision was largely included as a way to generate federal funds through the sale of credits to help pay for health care reform.

Democrats have pledged fast action on the measure. Representative Waxman has set Memorial Day as his target for passing the measure in the House and has the support of House Speaker Nancy Pelosi. The Senate, meanwhile, is considering several climate change proposals but it is not yet clear whether they will move a bill independently or will take up the issue in a conference on a House-passed bill. We will continue to work with lawmakers to craft final legislation that recognizes the importance of considering economic feasibility and the potential impact of mandates on the nation's affordable housing.

LABOR AND EMPLOYMENT POLICY

NAA/NMHC-Opposed "Card Check" Legislation Faces New Obstacle

Efforts by Congressional Democrats and labor leaders to expedite passage of the controversial Employee Free Choice Act (EFCA), also known as "card check," were dealt another blow this week when Senator Blanche Lincoln (D-AR) announced Monday that she would vote against the measure in its current form.

Lincoln, who voted in favor of bringing the card-check bill to a vote on the Senate floor in 2007, is the first Senate Democrat to oppose it in this Congress. Her announcement follows a similar pronouncement by Senator

Arlen Specter (R-PA) two weeks ago. Sen. Specter was the only Republican to join Democrats in 2007 in voting to move the bill forward.

This latest development means Senate Democrats, who hold 58 seats, lack the 60 votes needed to overcome a filibuster threat. While NAA/NMHC applaud Senator Lincoln's announcement, the battle over card check is far from over. Both Sen. Lincoln and Sen. Specter have suggested that they would consider compromise legislation, which will put pressure on lawmakers to amend rather than abandon card check legislation, or consider an alternative labor reform proposal. Following Lincoln's announcement, labor groups also expressed a willingness to accept changes in the bill.

We will continue to oppose the measure and educate members of Congress about how it would erode the fundamental tenets of the collective bargaining process.

GOVERNMENT AFFAIRS

Congress Passes Budget Resolutions with Major Tax Provisions

The House and Senate last week approved their respective budget blueprints (H. Con. Res. 85, S. Con. Res. 13), both roughly \$3.5 trillion. Both plans advance President Obama's priorities on education, energy and health care. They also contain major tax provisions. The House plan contains \$613.2 billion in tax relief over the five-year period, while the Senate plan contains \$825 billion in tax relief. The measures would extend middle class tax relief, including the 10 percent tax bracket, marriage penalty relief, the child tax credit and small business tax relief.

Both bills address estate tax reform, a priority issue for NAA/NMHC, although they take different approaches. The House plan contains language assuming the estate tax will be frozen at its current level, with an exemption amount of \$3.5 million and a maximum tax rate of 45 percent. Under current law, the current estate tax will disappear January 1, 2010, but it will be back with higher rates and lower exemptions in 2011.

The final Senate resolution included an amendment, passed 51-48, that would create a deficit-neutral reserve fund to allow for increasing the estate tax exemption level to \$5 million per spouse, indexed to inflation, while also lowering the maximum tax rate to 35 percent. A subsequent amendment, however, provides that such changes could only be implemented if Congress first passed legislation providing an equal amount of tax relief to taxpayers earning less than \$100,000 annually.

NAA/NMHC continue to advocate that any changes to the estate tax retain current-law rules regarding stepped-up basis and we are also monitoring any proposed changes regarding valuation of estate assets.

Conferees will also have to work out the different House and Senate approaches to Alternative Minimum Tax (AMT) relief. The Senate plan assumes that an AMT patch would be enacted without offsets through 2012. Under the House plan, if that chamber does not pass statutory pay-as-you-go rules, an AMT patch without offsets covering 2010 could not be voted on.

NAA/NMHC's primary interest in the AMT reform debate is its collateral

impact on carried interest taxation; when offsets are required for AMT relief, the resulting pressure on Congress to increase taxes may increase the likelihood that proposals that more than double the tax on carried interest income will be seriously considered. An AMT patch for 2009 has already been included in the economic stimulus bill (P.L. 111-5) enacted in February.

The Budget Resolution will go into conference when Congress returns from spring recess on Monday, April 20.

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